

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 331
FINAL READING
(SECOND)

Introduced by Landis, 46; Schimek, 27

Read first time January 12, 1999

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to workers' compensation; to amend sections
2 48-145.01 and 48-146.02, Reissue Revised Statutes of
3 Nebraska; to provide for monetary penalties; to change
4 provisions relating to suspension or revocation of
5 authority to provide compensation insurance; to provide
6 powers and duties; to harmonize provisions; to provide an
7 operative date; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-145.01, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 48-145.01. (1) Any employer required to secure the
4 payment of compensation under the Nebraska Workers' Compensation
5 Act who willfully fails to secure the payment of such compensation
6 shall be guilty of a Class I misdemeanor. ~~In any case when~~ If the
7 employer is a corporation, any officer or employee of the
8 corporation who had authority to secure payment of compensation on
9 behalf of the corporation and willfully failed to do so shall be
10 individually guilty of a Class I misdemeanor and such officer or
11 employee shall be personally liable jointly and severally with such
12 corporation for any compensation which may accrue under the
13 ~~Nebraska Workers' Compensation Act~~ act in respect to any injury
14 which may occur to any employee of such corporation while it ~~shall~~
15 so ~~fail~~ fails to secure the payment of compensation as required by
16 section 48-145. ~~In any case when~~ If the employer is a limited
17 liability company, any member or manager of the company who had
18 authority to secure payment of compensation on behalf of the
19 company and willfully failed to do so shall be individually guilty
20 of a Class I misdemeanor and such member or manager shall be
21 personally liable jointly and severally with such company for any
22 compensation which may accrue under the ~~Nebraska Workers'~~
23 ~~Compensation Act~~ act in respect to any injury which may occur to
24 any employee of such company while it ~~shall~~ so ~~fail~~ fails to secure
25 the payment of compensation as required by section 48-145.

26 (2) If an employer who is subject to the Nebraska
27 Workers' Compensation Act ~~does not carry workers' compensation~~
28 ~~insurance nor qualify as a self-insurer~~ fails to secure the payment

1 of compensation as required by section 48-145, he or she may also
2 be enjoined from doing business in this state until he or she
3 complies with subdivision (1) of section 48-145. If a temporary
4 injunction is granted at the request of the State of Nebraska, no
5 bond shall be required to make the injunction effective. The
6 Nebraska Workers' Compensation Court or the district court may
7 order such employer to pay a monetary penalty of not more than one
8 thousand dollars for each violation. For purposes of this
9 subsection, each day of continued failure to secure the payment of
10 compensation as required by section 48-145 constitutes a separate
11 violation. All penalties collected pursuant to this subsection
12 shall be remitted to the State Treasurer for credit to the
13 permanent school fund.

14 Sec. 2. Section 48-146.02, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 48-146.02. (1)(a) If a three-judge panel of the Nebraska
17 Workers' Compensation Court shall find finds, after due notice and
18 hearing at which the insurance organization shall be workers'
19 compensation insurer is entitled to be heard in person or by
20 counsel and present evidence, that such organization insurer has
21 repeatedly failed to comply with its obligations an obligation
22 under the provisions of the Nebraska Workers' Compensation Act with
23 such frequency as to indicate a general business practice to engage
24 in that type of conduct, it the three-judge panel may request the
25 Director of Insurance to suspend or revoke the authorization of
26 such organization insurer to write workers' compensation insurance
27 under the provisions of Chapter 44 and such act. Such suspension
28 or revocation shall not affect the liability of any such

1 ~~organization~~ insurer under policies in force prior to the
2 suspension or revocation.

3 ~~(2) (b) If the Nebraska Workers' Compensation Court shall~~
4 ~~find a three-judge panel of the compensation court finds,~~ after due
5 notice and hearing at which the risk management pool ~~shall be~~ is
6 entitled to be heard in person or by counsel and present evidence,
7 that such pool has ~~repeatedly~~ failed to comply with ~~its obligations~~
8 an obligation under the ~~provisions of the~~ Nebraska Workers'
9 Compensation Act, as set out in subsection (1) of section 44-4319,
10 with such frequency as to indicate a general business practice to
11 engage in that type of conduct, the ~~compensation court~~ three-judge
12 panel may suspend or revoke the authority of the pool to provide
13 group self-insurance coverage of workers' compensation liability
14 pursuant to the Intergovernmental Risk Management Act. Such
15 suspension or revocation shall not affect the liability of any such
16 risk management pool under the terms of the agreement forming the
17 pool in force prior to the suspension or revocation.

18 (c) If a three-judge panel of the compensation court
19 finds, after due notice and hearing at which the self-insurer is
20 entitled to be heard in person or by counsel and present evidence,
21 that such self-insurer has failed to comply with an obligation
22 under the Nebraska Workers' Compensation Act with such frequency as
23 to indicate a general business practice to engage in that type of
24 conduct, the three-judge panel may suspend or revoke the approval
25 of such self-insurer to provide self-insurance coverage of workers'
26 compensation liability pursuant to section 48-145. Such suspension
27 or revocation shall not affect the liability of any such
28 self-insurer under an approval by the compensation court to

1 self-insure in force prior to the suspension or revocation.

2 (d) Appeal from an action by a three-judge panel of the
3 compensation court pursuant to subdivision (1)(b) or (1)(c) of this
4 section shall be in accordance with section 48-185.

5 (2) In addition to any other obligations under the
6 Nebraska Workers' Compensation Act, the following acts or
7 practices, when committed with such frequency as to indicate a
8 general business practice to engage in that type of conduct, shall
9 subject the compensation insurer, risk management pool, or
10 self-insurer to action pursuant to subsection (1) of this section:

11 (a) Knowingly misrepresenting relevant facts or the
12 provisions of the Nebraska Workers' Compensation Act or any rule or
13 regulation adopted pursuant to such act;

14 (b) Failing to acknowledge with reasonable promptness
15 pertinent communications with respect to claims arising under the
16 act;

17 (c) Failing to promptly investigate claims arising under
18 the act;

19 (d) Not attempting in good faith to effectuate prompt,
20 fair, and equitable payment of benefits when compensability has
21 become reasonably clear;

22 (e) Refusing to pay benefits without conducting a
23 reasonable investigation;

24 (f) Failing to affirm or deny compensability of a claim
25 within a reasonable time after having completed the investigation
26 related to such claim;

27 (g) Paying substantially less than amounts owed under the
28 act where there is no reasonable controversy;

1 (h) Making payment to an injured employee, beneficiary of
2 a deceased employee, or provider of medical, surgical, or hospital
3 services without providing a reasonable and accurate explanation of
4 the basis for the payment;

5 (i) Unreasonably delaying the investigation or payment of
6 benefits by knowingly requiring excessive verification or
7 duplication of information;

8 (j) Failing, in the case of the denial of compensability
9 or the denial, change in, or termination of benefits, to promptly
10 provide a reasonable and accurate explanation of the basis for such
11 action to the injured employee or beneficiary of a deceased
12 employee;

13 (k) Failing, in the case of the denial of payment for
14 medical, surgical, or hospital services, to promptly provide a
15 reasonable and accurate explanation of the basis for such action to
16 the provider of such services; or

17 (l) Failing to provide the compensation court's address
18 and telephone number to an injured employee or beneficiary of a
19 deceased employee with instructions to contact the court for
20 further information:

21 (i) At or near the time the compensation insurer, risk
22 management pool, or self-insurer receives notice or has knowledge
23 of the injury; and

24 (ii) At or near the time of the denial of compensability
25 or the denial, change in, or termination of benefits.

26 (3) In order to determine compliance with obligations
27 under the Nebraska Workers' Compensation Act, the compensation
28 court or its designee may examine the workers' compensation records

1 of (a) a compensation insurer, a risk management pool, or a
2 self-insurer or (b) an adjuster, a third-party administrator, or
3 other agent acting on behalf of such compensation insurer, risk
4 management pool, or self-insurer. The authority of the
5 compensation court pursuant to this subsection is subject to the
6 limitations provided under the work-product doctrine and
7 attorney-client privilege as recognized in Nebraska law.

8 (4) The compensation court may adopt and promulgate rules
9 and regulations necessary to implement this section.

10 Sec. 3. This act becomes operative on January 1, 2000.

11 Sec. 4. Original sections 48-145.01 and 48-146.02,
12 Reissue Revised Statutes of Nebraska, are repealed.